

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer, CA 12496.

Affirmed.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases: Lands Subject to -- Withdrawals and Reservations: Effect of

Land which has specifically been withdrawn from mineral leasing is not available for disposition under the Mineral Leasing Act and an offer for that land must be rejected.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Filing

Where an order is published which restores certain withdrawn land to availability under the mineral leasing laws at a specific date and time in the future, a regular "over-the-counter" noncompetitive oil and gas lease offer which is delivered in advance to BLM with instructions that it be treated as filed effective as of the designated time and date must be considered a premature filing, and is properly rejected.

3. Administrative Authority: Generally -- Federal Employees and Officers: Authority to Bind Government

The authority of the United States to enforce a public right or protect a public right or protect a public interest is not vitiated or lost by acquiescence

of its officers, nor can reliance upon information or actions of any officer, agent, or employee operate to vest any right not authorized by law.

4. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior may, in his discretion, refuse to lease lands for oil and gas upon a proper determination that leasing would not be in the public interest.

APPEARANCES: K. Donelson Foose, Esq., Rachalk Production, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Rachalk Production, Inc., appeals from a decision of the California State Office, Bureau of Land Management (BLM), dated September 27, 1982, rejecting noncompetitive oil and gas lease offer, CA 12496, because the land was unavailable to mineral leasing at the time the offer was filed and because, in the exercise of Secretarial discretion, BLM determined that oil and gas leasing on the lands requested would adversely affect certain resource values.

The land at issue, lot 3, sec. 34, T. 10 N., R. 36 W., San Bernardino meridian, was withdrawn for lighthouse purposes by Executive Orders dated January 26, 1867, and November 3, 1905. This withdrawal was revoked by Public Land Order (PLO) No. 6151, dated February 8, 1982, which restored the land to the operation of the public land laws, the mining laws and the mineral leasing laws effective 10 a.m. on March 16, 1982. PLO No. 6151 was published in the Federal Register on February 18, 1982. 47 FR 7230.

On March 10, 1982, Rachalk Production, Inc., filed noncompetitive oil and gas lease offer CA 12496 for this land. Appended to each copy of the lease offer was a slip of paper with the following instruction to BLM: "NOTE: THIS SHOULD BE AN SOG APPLICATION AT 10:00 AM, 3/16/82 PER FEDERAL REGISTER ARTICLE CA-5704, VOLUME 47, NUMBER 33, FEBRUARY 18, 1982. (PLO 6151 - page 7230.)"

BLM, however, disregarded this instruction, and following its usual practice, date and time-stamped the lease offer to indicate that it was filed at 10:30 a.m. on March 10, 1982. Nevertheless, it appears that BLM seriously entertained the offer for several months, as it proceeded to compile an environmental assessment record and to receive reports from other sources concerning the effect of leasing the land.

On September 27, 1982, BLM issued its decision rejecting the Rachalk offer for two reasons. First, it held that the offer was prematurely filed

on March 10, 1982, when the land was still withdrawn, and that the status of the land at the time of filing was the controlling factor. ^{1/} Second, presumably as an alternative, BLM rejected the offer in the exercise of its discretion, on the grounds that oil and gas leasing would adversely affect the coastal habitat, certain identified endangered and threatened species, cultural resources, scenic qualities, recreational opportunities, and other resource values.

In its statement of reasons, appellant explains that it has successfully sent offers to another BLM office with instructions to file at a later date. It argues that if this method could be used in one BLM office, it should be permitted in others. Appellant also argues that the decision not to lease was an abuse of discretion in that it failed to adequately consider the possibilities of a "no surface occupancy" lease.

[1] All public domain lands subject to disposition under the Mineral Leasing Act, as amended, 30 U.S.C. § 181 (1976), may be leased for oil and gas by the Secretary of the Interior. 43 CFR 3101.1-1. However, land which has been withdrawn from mineral leasing is not available for disposition under the Act and an offer for that land must be rejected. Golden Eagle Petroleum, 67 IBLA 112 (1982). Land withdrawn from mineral leasing remains so until there is a formal revocation or modification of the order which effected the withdrawal. AA Minerals Corp., 30 IBLA 259 (1977). ^{2/}

[2] Appellant argues that its offer was filed for consideration after the formal revocation of the withdrawal was to be effected. As a general rule, applications which are accepted for filing must be rejected and cannot be held pending future availability of the land when approval of the application is prevented by withdrawal of the land or the fact that the land has not been restored to operation of the public land laws. See 43 CFR 2091.1 (Special Laws and Rules - Land Resource Management). However, PLO 6151 provided:

3. At 10 a.m. on March 16, 1982, the public lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals,

^{1/} At the time of the withdrawal the Mineral Leasing Act of 1920 did not exist, and minerals which later became subject to that Act were at that time available only under the general mining laws. While the Executive Orders of 1867 and 1905 did not expressly withdraw the land from the operation of the mining laws, we have held that such intent does not have to be specifically expressed in order to have that effect. See Pathfinder Mines Corp., 70 IBLA 264, 272 (1983). To presume that this withdrawal for lighthouse purposes did not segregate the land from availability to private entry and appropriation under the mining laws would expose the land to the risk of private acquisition, which would frustrate the very object of the withdrawal. Therefore, at the time the withdrawal was imposed, no minerals of any kind were available from the land. The subsequent enactment of the Mineral Leasing Act did not operate to alter the status of the land, absent a revocation of the withdrawal and an opening order.

^{2/} The BLM decision stated erroneously that the land was unavailable for leasing until March 17, 1982, whereas the correct date was March 16, 1982.

and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on March 16, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

4. The public lands will be open to location under the United States mining laws and to applications and offers under the mineral leasing laws at 10 a.m. on March 16, 1982.

47 FR 7230, 7231 (Feb. 18, 1982). Ordinarily, applications filed while the land is in a withdrawn or reserved status have no validity and will confer no rights upon the applicant, but an exception to the rule has been recognized where the order opening the land permitted the filing of applications prior to the date of the change in the status of the land. E.g., Vaughn K. Leavitt, 55 IBLA 59 (1981).

Allowance for applications received prior to the effective time was accorded by PLO 6151 to those applications filed under the public land laws. The term "public land laws" is ordinarily used to refer to statutes governing the alienation of public land, and generally is distinguished from both "mining laws," referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws," designating that group of statutes governing the leasing of public lands for specified minerals. Udall v. Tallman, 380 U.S. 1, 19, rehearing denied, 380 U.S. 989 (1965); Dale E. Armstrong, 53 IBLA 153 (1981). Thus, the reference in PLO 6151 for permitted acceptance of prior applications does not extend to the mineral leasing laws but is limited to the public land laws.

Although 43 CFR 2091.1 refers only to the public land laws, the Department has extended the policy espoused there to applications and offers for mineral leases and other interests in public lands, i.e., rejecting all applications for lands which are not available for requested disposition at the time they are filed or considered. Ordinarily, this rule has been followed whether the lands applied for were unavailable because of a statute, a withdrawal, a temporary disposition, or the exercise of the Secretary's discretion. J. G. Hathaway, 68 I.D. 48 (1961). An even more stringent application of the rule has been followed by the Department, *viz.*, that land which has been segregated from the public domain by patent, entry, selection, reservation or otherwise does not become available for other disposition until its restoration to the public domain has been noted on the tract books, and that an application filed in the interval between cancellation and notation will be rejected. Id. at 52, and cases cited therein. Thus, it is contrary to general Departmental policy to suspend filed oil and gas lease offers to await the leasability of certain land. Esdra K. Hartley, 23 IBLA 102 (1975). Cf. Justheim Petroleum Co., 18 IBLA 423 (1975) (suspension of filed offers pending adjudication of state selections). The rule is founded upon sound administrative practice; it is plain that the problem of administering premature offers would be considerable. The rule also avoids giving an applicant a preference or priority to which he has no right, and assures to all the public equality of opportunity to file. By comparison, an application under the simultaneous filing procedures, 43 CFR Subpart 3112, dated prior to the acceptance period is properly rejected in order to protect the interests of

other applicants who have complied with the procedures. Walter Adomkus, 67 IBLA 177 (1982). 3/

Moreover, where a noncompetitive oil and gas lease is to be issued, the statute requires that it be awarded to "the person first making application for the lease who is qualified to hold a lease * * *." 30 U.S.C. § 226(c) (1976). The responsibility for deciding priority among applicants is a critical function in BLM's adjudication process. To facilitate this determination, BLM procedures require that each offer be date and time-stamped immediately upon receipt. Appellant has no right to require BLM to act as its agent to hold and to file its offers at the time most advantageous to appellant's interest. Not only would such a practice raise questions concerning the integrity of the system, it would be administratively inconvenient were BLM to attempt to perform this service for everyone. Where a simultaneous filing of applications is planned and announced in advance by BLM, provision is made for fixing the time of filing at some time other than the time of submission. But this case involved regular "over-the-counter" lease offer filings, and it would have been improper for BLM to accede to the directions given by appellant, to the potential disadvantage of another offeror who filed one minute later in the regular course. We must conclude, therefore, that appellant's offer was prematurely filed.

[3] Appellant has failed to single out error in BLM's decision to reject its premature offer and merely refers to actions by one BLM office in another state to justify this appeal. The fact that in another BLM office oil and gas lease offers may have been accepted for lands which were not then available for leasing does not militate in favor of reenacting the scenario for the sake of consistency. Kenneth F. Cummings, 62 IBLA 206 (1982). The authority of the United States to enforce a public right or protect a public interest is not vitiated or lost by acquiescence of its officers, nor can reliance upon information or actions of any officer, agent, or employee operate to vest any right not authorized by law. Dennis M. Joy, 66 IBLA 260 (1982); Virgil V. Peterson, 66 IBLA 156 (1982). Disallowance of premature offers ensures that the first qualified applicant who timely files is entitled to the lease if issued.

[4] Appellant also appeals the exercise of the Secretary's authority not to lease the land. Under the provisions of the Mineral Leasing Act, supra, public lands are available for oil and gas leasing at the discretion of the Secretary of the Interior. 30 U.S.C. § 226(a) (1976); see Udall v. Tallman, supra at 4; Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1960); Rachalk Production, Inc., 65 IBLA 271 (1982). Accordingly, the Secretary has the authority to refuse to lease lands for oil and gas, and such discretion may be exercised for conservation, wildlife, and environmental protection, and other purposes in the public interest. Kenneth T. Cummings, supra. For appellant's information, the alternative possibility of leasing this land subject to a no-surface-occupancy stipulation was addressed in the environmental assessment report and rejected on the ground that due to the small size of the tract, drilling and production from adjacent land would also

3/ Appeal pending, Adomkus v. Watt, Civil No. 82-260 BLG. (D. Mont. filed Dec. 14, 1982).

degrade the resource values BLM has identified as worthy of protection. However, whether or not discretion has been abused need not be reviewed in this instance due to appellant's filing of a premature offer which must be rejected in any event.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

R. W. Mullen
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

